

## Competition - Hungary

Telephone company gets 30% fine increase in repeat investigation

Contributed by [Bán S Szabó & Partners](#)

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The Competition Office has imposed a fine of Ft200 million (around €755,000) on Invitel Telecommunications Zrt, Hungary's second-largest fixed telephony service provider. Invitel was penalised for abusing its dominant market position between 2001 and 2006 by restricting carrier selection services and hindering market entry. The decision is the result of a repeat investigation by the Competition Office after its original decision was repealed on the grounds of material failure to investigate all relevant facts of the case.

### Facts

The case concerned the carrier selection market between 2001 and 2006. Carrier selection is a mechanism that permits telephone users to choose national or international long-distance telecommunications carriers by dialling a code before the telephone number. For technical purposes, there is a distinction between this form of call-by-call selection and carrier pre-selection, whereby the user selects an alternative carrier for all of his or her national or international long-distance calls. When it was introduced, carrier selection was viewed as a catalyst for enhancing competition among telecommunications service providers.

In 2001 Invitel, as an incumbent fixed-line operator, was required to offer a carrier selection option as part of its tariff packages for subscribers. In order to meet this requirement, it made carrier selection available in two of its least popular tariff packages - the basic and general packages - but omitted it from all other packages. As a result, other operators that were supposed to be able to compete with Invitel could reach only a limited number of Invitel subscribers. In 2002 only 3% of Invitel's subscribers had the option to select a carrier; this percentage had fallen to 2% by 2005. The low penetration rate made carrier selection an inadequate mechanism for imposing effective competitive pressure on Invitel's market conduct. Invitel further negated the effect of the carrier selection feature by setting high fixed monthly charges (which were payable even if subscribers did not use their fixed line) and low per-minute charges in tariff packages with a carrier selection option. These measures made it even more difficult for an alternative operator to offer competitive rates, since it would have to at least match Invitel's very low per-minute charges. As a result, Invitel preserved its high market share and maintained subscriber charges that were higher than the national average from 2001 to 2005.

In 2006 Invitel modified its tariff packages. It made carrier selection available on all packages, but introduced a switching fee that was payable after each successful call by a subscriber, even if the call was terminated by an alternative carrier chosen by the subscribers.

The other significant change was that the fixed monthly charges included a predetermined amount of monthly call time. As a result, subscribers were less inclined to use a carrier selection option because, in paying the fixed monthly charge, they had already purchased a significant amount of call time. The new arrangements allowed Invitel to maintain its market position, even though the carrier selection option had been made available to all subscribers.

### Decision

The Competition Office found that all of Invitel's tariff structures implemented between 2001 and 2006 were likely to result in serious foreclosing effects. Invitel had successfully leveraged its dominant market position on the fixed-call origination market to the neighbouring carrier and call-termination market, where it faced competitive pressure from other operators. This constituted clear abuse of a dominant market position.

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The Competition Office imposed a fine that was 30% higher than the original penalty for the same infringement. In its first investigation the Competition Office took into consideration the fact that the national telecommunications regulator had fined Invitel on substantially identical grounds in 2006. However, in the meantime, the regulator's fine had been successfully challenged and set aside. Therefore, the Competition Office did not find it necessary to reflect the regulator's early decision.

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